



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 17, 2003

Robert Duke, Watermaster
Water District 34
P.O. Box 53
Mackay, ID 83251

Dear Mr. Duke:

As you have requested, this letter is intended to provide written documentation of our telephone discussion on October 9, 2003 regarding the delivery of winter stockwater in Water District 34. As we discussed, a memorandum providing additional detail on the basis for these directions, is attached for your reference.

As you noted, a number of water rights within Water District 34 were decreed with the comment, "The appropriator is entitled to the quantity of water described for stockwater purposes at a point of measurement where the delivery ditch enters the place of use described." For water rights decreed with this comment, the flow rate delivered at the diversion heading may exceed the stockwater flow rate if necessary to supply the stockwater flow rate where the delivery ditch enters the place of use described by the water right. However, water delivered in excess of the stockwater flow rate must not result in unreasonable waste of water, must be necessary to compensate for conveyance loss in the ditch, and may not be stored, used to increase soil moisture, or used for any type of beneficial use. Further, the flow rate delivered at the heading may not exceed the total flow rate of the water right.

For water rights that provide for winter stockwater, but do not include the comment referenced in the paragraph above, the flow rate at the diversion heading must be restricted to the winter stockwater flow rate, regardless of conveyance losses. Stockwater may not be delivered at points of diversion or places of use that are not authorized by a water right that specifies winter stockwater as a use. Incidental stockwater use is only allowed during the irrigation season of use.

As with irrigation water, stockwater may only be delivered when the water right is in priority. For stockwater rights below Mackay Reservoir, the general provisions define the minimum winter release from Mackay Reservoir. Stockwater rights below the reservoir may be called for and delivered if it does not interfere with storage in Mackay Reservoir by requiring a release of water in excess of the minimum release required at the 2b gauge, or the actual release of water, whichever is greater. A water right holder calling for delivery of winter stockwater must have access to a point of diversion and delivery system to convey the right to the place of use. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only

MEMORANDUM

TO: Tim Luke and Jennifer Berkey
Water Distribution, IDWR

FROM: Susan Hamlin Nygard, *shn*
Deputy Attorney General, IDWR

DATE: October 15, 2003

SUBJECT: Winter Stock Water Delivery in Basin 34

You have requested a memorandum regarding delivery of stock water in Basin 34 during the wintertime. The watermaster has received a number of inquiries on how the winter stock water will be handled. The question you have posed to me is how much water can be delivered to get the .02 cfs of stock water to the property.

The following quantity remark is included in most partial decrees for stock water: "The appropriator is entitled to the quantity of water described for stock water purposes at a point of measurement where the delivery ditch enters the place of use described." The explanatory material for the stock water right may describe the delivery ditch and the number of head of cattle. If the stock water right is part of an irrigation right, the water right includes a total diversion rate limitation for the water use, which limits the delivery of the stock water. In other words, to get the water to the point of measurement during the non-irrigation season the amount diverted cannot exceed the total diversion rate of the water right. Also implied with the rights and confirmed by IDWR Rules for Distribution is that the delivery of the stock water during the non-irrigation season cannot constitute waste.

The general provisions for Basin 34, as decreed by the SRBA court, address winter stock water issues. General Provision 2, *2-B Gage and Stock Watering During Non-Irrigation Season*, states the following:

During the time period from November 1 of each year to the beginning of the next irrigation season (the "non-irrigation" period), all or a portion of the water of the Big Lost River flowing into Mackay Reservoir may be diverted, according to priority, for storage under water right numbers 34-00012 and 34-10873 provided the natural flow at the 2-B gage is not less than fifty cubic feet per second. During the non-irrigation period, natural flow water rights downstream of Mackay Dam and senior in priority to water rights numbers 34-00012 and 34-10873 may be diverted for domestic and livestock uses under water rights authorized for these purposes.

The clause, "according to priority" implies that wintertime stock water uses upstream from the Mackay Reservoir may divert if they are senior in time to the storage

Memorandum
October 15, 2003
Page 3 of 3

In sum, winter stock water rights upstream from the Mackay Reservoir may divert if their partial decree provides for such use and if they are senior in time to the BLRID storage rights 34-00012 and 34-10873. Senior rights downstream from Mackay Dam may also divert for non-irrigation season stock water, if their partial decree provides for such use, up to the amount of the minimum release required at the 2-B Gage or the actual release, whichever is greater.

If the right includes the remark that allows delivery to the point of measurement, the amount diverted cannot exceed the total diversion rate of the water right and delivery of that water cannot constitute unreasonable waste as determined by the Director. Finally, if there is no remark referencing delivery to the point of measurement then the right is limited to the diversion rate for stock water measured at the point of diversion.